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of Minorities
Forty-sixth session
Agenda item 22

DRAFT REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SIXTH SESSION

Rapporteur: Mr. Osman El-Hajjé

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1994/24. The right to freedom of movement

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Reaffirming the right of everyone lawfully within the territory of a State to liberty of movement and freedom to choose his residence, and the prohibition of arbitrary deprivation of the right to enter one's own country as set out in article 12 of the International Covenant on Civil and Political Rights and article 13 of the Universal Declaration of Human Rights,

Recognizing that practices of forcible exile, mass expulsions and deportations, population transfer, "ethnic cleansing" and other forms of forcible displacement of populations within a country or across borders deprive the affected populations of their right to freedom of movement,

Noting that policies of forcible displacement are one of the major causes of flows of refugees and internally displaced persons,

Concerned that more than 20 million refugees and even larger and growing numbers of internally displaced persons exist worldwide,

1. Affirms the right of persons to remain in peace in their own homes, on their own lands and in their own countries;

2. Also affirms the right of refugees and displaced persons to return, in safety and dignity, to their country of origin and/or within it, to their place of origin or choice;

3. Urges Governments and other actors involved to do everything possible in order to cease at once all practices of forced displacement, population transfer and ethnic cleansing in violation of international legal standards;

4. Decides to include under the agenda item entitled "Freedom of movement" a sub-item relating to questions of displacement entitled "Population displacement" and to keep under constant review respect for the right to freedom of movement, including the right to remain and to return.

36th meeting
26 August 1994
[Adopted without a vote. See chap. XX.]

1994/25. Question of the implications for human rights of United Nations action, including humanitarian assistance in addressing international humanitarian problems and in the promotion and protection of human rights

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Mindful that one of the purposes of the United Nations is to achieve international cooperation in solving problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion;

Considering that all States Members of the United Nations have the duty to respect and to promote respect for the basic principles of international law enshrined in Article 2 of the Charter of the United Nations, as well as to implement Articles 55 and 56;

Reaffirming the principles of the sovereignty and territorial integrity of States, and that it is the responsibility of each State to care for the victims of natural disasters and other emergency situations occurring on its territory;

Reaffirming also the functions and competence as established in the Charter for the principal organs of the United Nations, in particular those relating to the need to foster international cooperation to achieve the promotion of universal respect for and observance of the human rights and fundamental freedoms of all;

Aware of the growing involvement of the United Nations in providing and coordinating humanitarian assistance to the victims of disasters and other emergency situations;

Reaffirming the close relationship which exists between general international law, international humanitarian law, international human rights law, refugee law and humanitarian assistance;

Aware that effective United Nations actions in the humanitarian field require a comprehensive analysis of the relevant legal principles and norms in relation to international cooperation in the humanitarian and human rights spheres in the light of the provisions of the Charter of the United Nations and

other applicable international norms, and that such United Nations actions would benefit from a thorough evaluation and clarification of the issues involved;

Recalling General Assembly resolution 45/100 of 14 December 1990, in which the Assembly reaffirmed the cardinal importance of humanitarian assistance for the victims of natural disasters and similar emergency situations;

Recalling also General Assembly resolution 45/102 of 14 December 1990, in which the Assembly encouraged the international community to contribute substantially and regularly to international humanitarian activities, and stressing, in this context, the importance of further developing international cooperation in the humanitarian field to facilitate better understanding, mutual respect, confidence and tolerance among countries and peoples, thus contributing to a more just and non-violent world;

Noting General Assembly resolution 47/120V of 18 December 1992, in which the Assembly, welcoming the increasing role of the United Nations system in providing humanitarian assistance, encouraged the Secretary-General to continue to strengthen the capacity of the Organization in order to ensure coordinated planning and execution of humanitarian assistance programmes, drawing upon the specialized skills and resources of all parts of the United Nations system, as well as those of non-governmental organizations, as appropriate;

Noting also General Assembly resolution 48/116 of 20 December 1993, in which the Assembly, noting with concern that the number of refugees and other persons to whom the Office of the United Nations High Commissioner for Refugees was called upon to provide assistance and protection had continued to increase and that their protection continued to be seriously jeopardized in many situations as a result of, inter alia, the failure to respect and ensure their fundamental freedoms and human rights, reaffirmed its support for the High Commissioner's efforts to provide humanitarian assistance and protection, taking into account the complementarities of the mandates and expertise of other relevant organizations;

Welcoming the activities of the newly created Department for Humanitarian Affairs, which should be reinforced;

Bearing in mind General Assembly resolution 48/57 of 14 December 1993, in which the Assembly expressed its deep concern about the increasing number and

growing magnitude and complexity of natural disasters and other emergencies and stressed the need for improved coordination within the United Nations system and the necessity for the Department of Humanitarian Affairs to collect and disseminate timely information on natural disasters and other humanitarian emergencies in order to provide early warning of a crisis, and to assess needs on a continuing basis;

Mindful of the complexity and sensitivity of United Nations humanitarian action currently being undertaken in a number of countries plagued by war or internal conflict;

Mindful also of the role of the Sub-Commission, as a body of independent experts in the field of human rights, in providing competent United Nations bodies with its views within its area of competence, with the aim of establishing, in a collective effort, a better understanding of the complex interrelationship between human rights and humanitarian considerations, thereby providing the United Nations with a more secure foundation for future action;

1. Expresses its appreciation to Mrs. Claire Palley for her further preparatory document on the question of the implications of humanitarian activities for the enjoyment for human rights (E/CN.4/Sub.2/1994/39);

2. Reaffirms the important role of the United Nations system as a whole in encouraging international cooperation in order to protect and promote human rights, as well as to address natural and man-made disasters, provide humanitarian assistance and coordinate disaster relief;

3. Decides to recommend to the Commission on Human Rights the appointment of Mrs. Claire Palley as Special Rapporteur of the Sub-Commission on the question of the implications for human rights of United Nations action under the Charter, including humanitarian assistance, in addressing international humanitarian problems and in the promotion and protection of human rights;

4. Requests the Special Rapporteur to submit a preliminary report at its forty-seventh session, a progress report at its forty-eighth session and her final report at its forty-ninth session;

5. Invites the members of the Sub-Commission to submit to the Special Rapporteur their views on the question;

6. Requests the Secretary-General to provide the Special Rapporteur with all necessary assistance, including the resources required, to complete her study;

7. Recommends the following draft decision to the Commission on Human Rights for adoption:

"The Commission on Human Rights, taking note of resolution 1994/25 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, endorses the Sub-Commission's request to appoint Mrs. Claire Palley as Special Rapporteur on the question of the implications for human rights of United Nations action, including humanitarian assistance, in addressing international humanitarian problems and in the promotion and protection of human rights, also endorses the Sub-Commission's request to the Secretary-General to provide the Special Rapporteur with all the necessary assistance, including the resources required, to complete her study, and proposes the following draft decision to the Economic and Social Council for adoption:

'The Economic and Social Council, taking note of Commission on Human Rights decision 1995/.. of .. 1995, authorizes the appointment of Mrs. Claire Palley as Special Rapporteur on the question of the implications for human rights of United Nations action, including humanitarian assistance, in addressing international humanitarian problems and in the promotion and protection of human rights, and also endorses the Sub-Commission's request to the Secretary-General to provide the Special Rapporteur with all the necessary assistance, including the resources required, to complete her study.'"

36th meeting
26 August 1994
[Adopted without a vote. See chap. XX.]

1994/26. Minimum humanitarian standards

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Appalled by the massive violations of human rights and humanitarian law in recent conflicts, particularly those in Bosnia and Rwanda,

Considering that situations of internal violence, disturbances, tensions and public emergencies continue to cause serious instability and great suffering in all parts of the world,

Emphasizing that all persons, groups and public authorities should observe and themselves benefit from respect for the principles of international law derived from human rights, humanitarian law and established custom, including the principles of humanity and the dictates of public conscience,

Conscious of the need to reaffirm and develop principles governing the behaviour of all persons, groups and public authorities in situations of public emergency,

Observing that the Commission on Human Rights in recent years has dealt extensively with situations of massive violations of humanitarian principles, particularly during the special sessions on the former Yugoslavia and on Rwanda, making it desirable to achieve further clarification of international standards in this field,

Having considered, at its forty-third session, the Declaration of Minimum Humanitarian Standards, adopted by a group of experts at a meeting in Turku (Åbo), Finland, in December 1990 (E/CN.4/Sub.2/1991/55),

Noting that the Declaration, having been adopted by a group of experts, does not in itself constitute an international legal instrument but aims at the reaffirmation and progressive development of international law,

1. Decides to transmit the text of the Declaration of Minimum Humanitarian Standards to the Commission on Human Rights;

2. Recommends that the Commission examine the Declaration with a view to its further elaboration and eventual adoption.

36th meeting
26 August 1994
[Adopted without a vote. See chap. V.]

1994/27. Human rights and the environment

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1990/7 of 30 August 1990, in which it entrusted Mrs. Fatma Zohra Ksentini with the task of undertaking a study on human rights and the environment,

Recalling also Commission on Human Rights resolution 1994/65 of 5 March 1994, in which the Commission endorsed the request of the Sub-Commission that the Special Rapporteur include in her final report recommendations for follow-up by the Commission of her work,

Having examined the final report, including the annexes, prepared by the Special Rapporteur (E/CN.4/Sub.2/1994/9),

Convinced that continued work on human rights and the environment is essential for the full realization of human rights and fundamental freedoms,

1. Expresses its deepest appreciation to the Special Rapporteur, Mrs. Fatma Zohra Ksentini, for her comprehensive and profound final report on human rights and the environment;

2. Welcomes especially the conclusions and recommendations contained in the final report, as well as the draft principles on human rights and the environment;

3. Decides to transmit the final report to the Commission on Human Rights for its consideration, with a view to its publication and widest possible dissemination;

4. Invites the Commission on Human Rights to pay particular attention to the conclusions and recommendations contained in the report, taking into account its resolution 1994/65 of 5 March 1994 and the comments and observations made at the forty-sixth session of the Sub-Commission;

5. Recommends the following draft resolution to the Commission on Human Rights for adoption:

"The Commission on Human Rights,

Taking account of its resolution 1994/65 of 9 March 1994,

Taking account also of resolution 1994/ ... of ... August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Having considered the final report of the Special Rapporteur on human rights and the environment (E/CN.4/Sub.2/1994/9),

1. Expresses its deepest appreciation to the Special Rapporteur, Mrs. Fatma Zohra Ksentini, for her final report on human rights and the environment;

2. Requests that the Special Rapporteur's final report, with the annexes, be published by the United Nations in all the official languages;

3. Decides to appoint a special rapporteur on human rights and the environment with a mandate to:

(a) Monitor, examine and receive communications and to make recommendations on environmental problems affecting the full enjoyment of human rights;

(b) Seek comments on the draft principles on human rights and the environment annexed to the final report of the Special Rapporteur of the Sub-Commission and to make recommendations regarding the draft;

4. Requests the Special Rapporteur to submit a report to the Commission at its fifty-second session;

5. Requests the Secretary-General to provide the Special Rapporteur with all necessary assistance;

6. Recommends the following draft decision to the Economic and Social Council for adoption:

'The Economic and Social Council, taking note of Commission on Human Rights resolution 1995/27 of 26 August 1994, decides to endorse the Commission's decision to appoint a special rapporteur on human rights and the environment, the Commission's request to the Secretary-General to provide the Special Rapporteur with all necessary assistance and the Commission's request that the final report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on human rights and the environment (E/CN.4/Sub.2/1994/9) be published by the United Nations in all the official languages.'"

36th meeting
26 August 1994
[Adopted without a vote. See chap. V.]

1994/28. Recognition of gross and large-scale violations of human rights as an international crime

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Aware that gross and large-scale violations of human rights are a matter of grave concern for mankind,

Believing that such violations, if they are perpetrated on the orders of Governments or are sanctioned by them, pose the greatest danger to mankind,

Having discussed the working paper (E/CN.4/Sub.2/1993/10 and Corr.1) submitted by Mr. Stanislav Chernichenko in accordance with its decision 1992/109 of 27 August 1992,

Referring to its resolution 1993/30 of 25 August 1993, concerning the appointment of Mr. Stanislav Chernichenko as Special Rapporteur to prepare a report entitled "Recognition of gross and large-scale violations of human rights perpetrated on the orders of Governments or sanctioned by them as an international crime",

Taking into account decision 1994/103 of 4 March 1994 of the Commission on Human Rights, in which it decided to request the Sub-Commission to reconsider, without prejudice to the independence of the Sub-Commission and its members, its decisions to recommend new studies and related efforts, including the above-mentioned report,

Considering, however, that the preparation of this report is very important and opportune,

Taking also into account that the Special Rapporteurs on the right to a fair trial, Mr. Stanislav Chernichenko and Mr. William Treat, completed their study in 1994,

Expressing its appreciation to Mr. Stanislav Chernichenko for the working paper on the definition of gross and large-scale violations of human rights as an international crime,

1. Decides to recommend to the Commission on Human Rights the appointment of Mr. Stanislav Chernichenko as Special Rapporteur to prepare a report entitled "Recognition of gross and large-scale violations of human rights perpetrated on the orders of Governments or sanctioned by them as an international crime";

2. Also decides to consider the report of the Special Rapporteur at its forty-seventh session under the agenda item entitled "Review of further developments in fields with which the Sub-Commission has been concerned";

3. Further decides to recommend that the Special Rapporteur take into account the comments made on his working paper at its forty-fifth and forty-sixth sessions, as well as relevant work of the International Law Commission;

4. Recommends that the Special Rapporteur include in his report a draft declaration on the question mentioned above;

5. Recommends the following draft decision to the Commission on Human Rights for adoption:

"The Commission on Human Rights, noting resolution 1994/28 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, endorses the recommendation to appoint Mr. Stanislav Chernichenko as Special Rapporteur to prepare a report on the recognition of gross and large-scale violations of human rights perpetrated on the orders of Governments or sanctioned by them as an international crime, and requests the Secretary-General to provide the Special Rapporteur with all the assistance necessary for the completion of his task."

36th meeting
26 August 1994
[Adopted without a vote. See chap. V.]

1994/29. Discrimination in the context of human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS)

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Mindful that respect for the principle of non-discrimination is the key to the protection and realization of fundamental human rights and freedoms as recognized and protected by international standards,

Convinced that discrimination against any person on the grounds of AIDS or HIV infection, actual or presumed, violates fundamental human rights and freedoms,

Alarmed at discriminatory laws and policies and the emergence of new forms of discriminatory practices which deny people with HIV infection or AIDS, their

families and associates, as well as those presumed to be infected or at risk of infection, enjoyment of their fundamental rights and freedoms,

Concerned that lack of full enjoyment of their fundamental rights by persons suffering from economic, social or legal disadvantage heightens their vulnerability to the risk of HIV infection,

Noting that, according to a report submitted to the Commission on the Status of Women at its thirty-third session (E/CN.6/1989/6/Add.1), women are especially vulnerable to the risk of HIV infection and to the economic and social impact of AIDS as a result of their disadvantaged social, legal and economic status,

Concerned that evidence indicates that other groups in society suffering indiscrimination in the enjoyment of their fundamental rights and freedoms, notably indigenous peoples, minorities, street children and other children with inadequate care and those living in poverty and social disadvantage, are also more vulnerable to the risk of infection as a result of disadvantage in access to education, health care and social services, and that they suffer disproportionately from the economic and social consequences of the pandemic,

Concerned also that the fear and ignorance surrounding AIDS are leading to increased stigmatization of and prejudice against people with HIV and AIDS and members of particular groups in society resulting, in some countries, in increasing violence against such individuals, arbitrary detention and deportation,

Recalling Commission on Human Rights resolution 1994/49 of 4 March 1994 in which the Commission called upon all States to ensure respect for human rights in the context of AIDS and to ensure full enjoyment of all rights by people with HIV and AIDS, their families and those associated with them, and to take measures to combat social stigmatization and discrimination,

Bearing in mind World Health Assembly resolution WHA.45.35 of 14 May 1992 in which the Assembly recognized that there was no public health rationale for any measures that limit the rights of the individual, notably measures establishing mandatory screening, and called upon States to reinforce efforts to oppose discrimination against persons and specific groups known to be or suspected of being infected with HIV,

Recognizing that measures to combat discrimination and social stigma form an essential part of an effective public health strategy,

Welcoming the decision of the Economic and Social Council, contained in its resolution 1994/24 of 26 July 1994, endorsing the establishment of a joint and co-sponsored United Nations programme on HIV/AIDS,

1. Confirms that discrimination on the basis of AIDS or HIV status, actual or presumed, is prohibited by existing international human rights standards, and that the term "or other status" in non-discrimination provisions in international human rights texts should be interpreted to cover health status, including HIV/AIDS;

2. Calls upon all States to review their laws, policies and practices in the context of HIV and AIDS in order to ensure that they respect human rights standards, including the prohibition of AIDS-related discrimination, and to take all the necessary steps, including the introduction of protective legislation and appropriate education, to combat discrimination, prejudice and stigma, and to ensure the full enjoyment of civil, political, economic, social and cultural rights by people with HIV and AIDS, their families and those associated with them, and people presumed to be at risk of infection;

3. Also calls upon all States to strengthen their efforts to advance the legal, economic and social status of women, children and indigenous peoples, as well as of minorities and other groups suffering discrimination in the enjoyment of their rights, in order to render them less vulnerable to the risk of HIV infection and to the adverse socio-economic consequences of the AIDS pandemic;

4. Commends the Working Group on Contemporary Forms of Slavery for giving attention to protecting children from the risk of HIV infection resulting from sexual exploitation;

5. Requests the Commission on Human Rights to consider recommending the organization by the Centre for Human Rights of a second international expert consultation on human rights and AIDS, with particular emphasis on the prevention of AIDS-related discrimination and stigma;

6. Also requests the Commission on Human Rights to consider the appropriate methods by which to keep under continuous review the protection of the rights of people affected by AIDS-related discrimination;

7. Welcomes the request by the Commission on Human Rights to the Secretary-General to submit to the Commission at its fifty-first session a report on international and domestic measures taken to protect human rights and prevent discrimination in the context of HIV/AIDS, and recommends that this report consider the development of a declaration on respect for human rights in the response to AIDS and guidelines for the prevention of AIDS-related discrimination;

8. Also welcomes the report of the Secretary-General on developments in the United Nations system concerning HIV and AIDS, in particular the progress made in establishing a joint and co-sponsored United Nations programme on HIV/AIDS (E/CN.4/Sub.2/1994/8), and requests the co-sponsors of the future programme to integrate a strong human rights component into the programme's strategies and work;

9. Requests the Secretary-General to bring the present resolution to the attention of the relevant United Nations agencies and bodies, including working groups and special rapporteurs, as well as the treaty monitoring bodies, and urges all relevant bodies and procedures to consider the impact of AIDS-related discrimination within the context of their mandates and to include consideration of this issue in their reports;

10. Decides to keep the issue of AIDS-related discrimination under continuous review, and to give consideration to this issue under all relevant items of its agenda as well as in the work of its relevant working groups and special rapporteurs.

36th meeting
26 August 1994
[Adopted without a vote. See Chap. V.]

1994/30. Traditional practices affecting the health of women and children

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolutions 1991/23 of 29 August 1991 and 1993/33 of 25 August 1993,

Recalling also Commission on Human Rights decision 1994/104 of 4 March 1994, by which the Commission endorsed the recommendations of the Sub-Commission,

Taking note with appreciation of the report of the second United Nations Regional Seminar on Traditional Practices affecting the Health of Women and Children (E/CN.4/Sub.2/1994/10 and Corr.1) and in particular of the Plan of Action for the Elimination of Harmful Traditional Practices affecting the Health of Women and Children (E/CN.4/Sub.2/1994/10/Add.1 and Corr.1),

1. Expressing its appreciation to the Government of Sri Lanka for hosting the second United Nations Regional Seminar on traditional practices affecting the health of women and children at Colombo from 4 to 8 July 1994;

2. Expresses its deep appreciation to the Special Rapporteur, Ms. Halima Embarek Warzazi, for her constructive contribution to the seminar and specifically to the elaboration of the Programme of Action;

3. Adopts the Programme of Action on Traditional Practices affecting the Health of Women and Children submitted by the Special Rapporteur (E/CN.4/Sub.2/1994/10/Add.1 and Corr.1);

4. Decides to recommend that the Commission on Human Rights extend the mandate of the Special Rapporteur for two more years, in order to enable her to undertake an in-depth study to assess, inter alia, the differences and the similarities between traditional practices affecting the health of women and children in many parts of the world, taking into consideration, among other relevant documents and information, the conclusions and recommendations of the two regional seminars and the effects of the implementation of the Plan of Action;

5. Requests the Secretary-General to transmit the Plan of Action to the International Conference on Population and Development, to be held in Cairo in September 1994, and to the Fourth World Conference on Women, to be held in Beijing in 1995, as well as to all competent organs and bodies of the United Nations system and to all intergovernmental and non-governmental organizations concerned;

6. Requests the Special Rapporteur to submit her preliminary report at the forty-seventh session and her final report at the forty-eighth session of the Sub-Commission;

7. Requests the Secretary-General to provide all the assistance that the Special Rapporteur may require in the exercise of her mandate;

8. Decides to keep this item on its agenda, and recommends that the Commission on Human Rights continue to include it in its agenda also;

9. Recommends the following draft decision to the Commission on Human Rights for adoption:

"The Commission on Human Rights, noting resolution 1994/30 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, endorses the recommendations of the Sub-Commission that:

(a) The mandate of the Special Rapporteur, Ms. Halima Embarek Warzazi, be extended for two more years, in order to enable her to undertake an in-depth study to assess, inter alia, the differences and the similarities between traditional practices affecting the health of women and children in many parts of the world, taking into consideration, among other relevant documents and information, the conclusions and recommendations of the regional seminars and the effects of the implementation of the Plan of Action for the Elimination of Harmful Traditional Practices affecting the Health of Women and Children;

(b) The Special Rapporteur submit her preliminary report to the Sub-Commission at its forty-seventh session and her final report at its forty-eighth session; and

(c) The Secretary-General be requested to provide all the assistance that the Special Rapporteur may require in the exercise of her mandate; and recommends the following draft decision to the Economic and Social Council for adoption:

'The Economic and Social Council noting Commission on Human Rights decision ... of ... March 1995 and resolution ... of ... August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, approves the Commission's endorsement of the Sub-Commission's recommendations that:

(a) The mandate of the Special Rapporteur, Ms. Halima Embarek Warzazi, be extended for two more years, in order to enable her to undertake

an in-depth study to assess, inter alia, the differences and the similarities between traditional practices affecting the health of women and children in many parts of the world, taking into consideration, among other relevant documents and information, the conclusions and recommendations of the regional seminars and the effects of the implementation of the Plan of Action for the Elimination of Harmful Traditional Practices affecting the Health of Women and Children;

(b) that the Special Rapporteur be requested to submit her preliminary report to the Sub-Commission at its forty-seventh session and her final report at its forty-eighth session; and

(c) that the Secretary-General be requested to provide all the assistance that the Special Rapporteur may require in the exercise of her mandate.'"

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[Adopted without a vote. See chap. V.]

1994/31. Encouragement of universal acceptance of human rights instruments

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1992/1 of 14 August 1992, in which it requested its Chairman to appoint one of its members to report to the Sub-Commission on the progress made in the universal acceptance of human rights instruments,

Bearing in mind steps taken in earlier years by the Sub-Commission to consider ways and means of encouraging Governments which had not yet done so to ratify or accede to international human rights instruments,

Considering that since 1979, the year when the Sub-Commission began systematically to address the issue of encouraging universal ratification of international human rights instruments, no substantive progress has been made in its attempt to convince Governments of the utility of the involvement of the United Nations in assisting them to ratify human rights instruments,

Taking note of the absence of any formal response from Member States to the invitations extended to them to offer clarification as to why they are unable to ratify these instruments,

Taking note also of the absence of advisory services on this issue provided by the Centre for Human Rights at the request of States, resulting from the continued lack of interest by States in the matter,

Noting with appreciation the extensive and continuous attempts to promote further ratifications undertaken by the High Commissioner for Human Rights, the Assistant Secretary-General for Human Rights and the Centre for Human Rights,

Reaffirming the importance of the ongoing informal consultations between these United Nations entities and Member States resulting from those promotional activities,

Bearing in mind the ongoing problems in the rationalization of its work, especially during its forty-sixth session,

1. Decides to discontinue consideration of this matter under a separate agenda item;

2. Also decides to take up these issues when they arise under the existing items of its agenda.

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26 August 1994
[Adopted without a vote. See chap. XIV.]

1994/32. Strengthening of the Centre for Human Rights

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling all relevant General Assembly and Commission on Human Rights resolutions,

Considering that the promotion of universal respect for and observance of human rights and fundamental freedoms is one of the basic purposes of the Charter of the United Nations and an issue of the utmost importance for the Organization,

Acknowledging the increasing attention given to the activities undertaken by the United Nations system in the field of human rights,

Recalling that the Vienna Declaration and Programme of Action (A/CONF.157/23) stresses the importance of strengthening the Centre for Human Rights,

Noting that the activities envisaged in the Vienna Declaration and Programme of action will add further to the workload and the responsibilities of the Centre for Human Rights,

Emphasizing the important role of the Centre for Human Rights as a coordinating unit within the United Nations system in the promotion, protection and implementation of human rights and the need to provide it with sufficient human and financial resources, particularly in view of the fact that its workload has dramatically increased while resources have failed to keep pace with the expansion of its responsibilities,

Emphasizing also the need to pay particular attention to the recruitment to the Centre for Human Rights of personnel from developing countries, to ensure equitable geographical distribution and in this regard to give priority in particular to recruitment to high-level and professional posts and also to the recruitment of women,

Welcoming the fact that the World Conference on Human Rights made recommendations for securing the necessary financial and other resources for United Nations activities in the field of human rights,

1. Requests the Secretary-General to enhance further the role and importance of the Centre for Human Rights, under the overall supervision of the High Commissioner for Human Rights, as the coordinating unit within the United Nations system with respect to human rights;

2. Welcomes the efforts of the Secretary-General, encourages him to continue to implement measures to improve the efficiency and effectiveness of the Centre for Human Rights;

3. Requests the Secretary-General to ensure that sufficient financial, human and other resources are accorded to the Centre for Human Rights to enable it to undertake all its functions, in full and on time;

4. Also requests the Secretary-General and the competent United Nations bodies to implement, as appropriate and as a matter of urgency, the relevant recommendations which the World Conference on Human Rights made with regard to

securing the necessary financial and other resources for the strengthening of the Centre for Human Rights;

5. Decides to consider the question again at it forty-seventh session.

36th meeting
26 August 1994
[Adopted without a vote. See chap. IV.]

1994/33. Right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling resolution 1994/359. of 4 March 1994 of the Commission on Human Rights in which the Commission recommended that the Sub-Commission, in conformity with Sub-Commission resolution 1993/29 of 25 August 1993, take measures to examine the basic principles and guidelines proposed by the Special Rapporteur, Mr. Theo van Boven, in his study on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8) with a view to making proposals thereon and report to the Commission,

Noting with interest the report of the Secretary-General prepared pursuant to Sub-Commission resolution 1993/29 (E/CN.4/Sub.2/1994/7 and Add.1) containing comments on the proposed basic principles and guidelines received from States, intergovernmental organizations and non-governmental organizations,

Noting also the report of its sessional working group on the administration of justice and the question of compensation (E/CN.4/Sub.2/1994/22) and the preliminary consideration given by the sessional working group to the proposed basic principles and guidelines,

1. Decides to continue the consideration of the proposed basic principles and guidelines at its forty-seventh session with a view to making substantive progress in the matter;

2. Requests the Secretary-General to invite States and competent intergovernmental and non-governmental organizations which have not yet done so to submit their comments on the proposed basic principles and guidelines.

36th meeting
26 August 1994

[Adopted without a vote. See chap. XI.]

1994/34. Question of the impunity of perpetrators of violations of human rights

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Guided by the principles enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, other relevant human rights instruments and the Geneva Conventions of 12 August 1949,

Recalling the interdependence and indivisibility of civil and political rights and economic, social and cultural rights,

Convinced that the increasingly widespread practice worldwide of impunity for perpetrators of violations of human rights is a fundamental obstacle to the observance of human rights,

Recalling its resolution 1992/23 of 27 August 1992, in which it decided to request Mr. El Hadji Guissé and Mr. Louis Joinet to draft a study on the impunity of perpetrators of violations of human rights, and Commission on Human Rights resolution 1993/43 of 5 March 193, in which the Commission endorsed the decision of the Sub-Commission,

Recalling further its resolution 1993/37 of 26 August 1993 and Commission on Human Rights resolution 1994/44 of 4 March 1994,

Bearing in mind paragraph II.91 of the Vienna Declaration and Programme of Action (A/CONF.157/23), in which the World Conference on Human Rights supported the efforts of the Commission and the Sub-Commission to intensify opposition to the impunity of perpetrators of serious violations of human rights,

1. Welcomes with satisfaction the preliminary report (E/CN.4/Sub.2/1994/11) on the question of the impunity of perpetrators of violations of human rights (economic, social and cultural rights);

2. Decides, in order to facilitate the treatment of the question, to entrust Mr. Joinet with the completion of the first aspect, concerning civil and

political rights, and Mr. Guissé with the second aspect, concerning economic, social and cultural rights;

3. Requests the Special Rapporteurs to submit their respective reports to the Sub-Commission at its forty-seventh session;

4. Requests the Secretary-General to provide the Special Rapporteurs with any assistance required to enable them to discharge their task;

5. Invites Governments, competent bodies of the United Nations, the specialized agencies, regional intergovernmental organizations and non-governmental organizations to provide or continue to provide information on the question;

6. Decides to consider the question of the impunity of perpetrators of violations of human rights at its forty-seventh session under the agenda item entitled "The administration of justice and the human rights of detainees".

36th meeting
26 August 1994
[Adopted without a vote. See chap. XI.]

1994/35. The right to a fair trial

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1990/18 of 30 August 1993, in which it decided to entrust Mr. Stanislav Chernichenko and Mr. William Treat with the preparation of a study entitled "The right to a fair trial: current recognition and measures necessary for its strengthening",

Recalling also its resolutions 1991/14 of 28 August 1991, 1992/21 of 27 August 1992 and 1993/26 of 25 August 1993, as well as Commission on Human Rights resolutions 1991/43 of 5 March 1991 and 1992/34 of 28 February 1992 and decision 1993/106 of 5 March 1993,

Recalling, in particular, Commission decision 1994/107 of 4 March 1994, by which it decided to consider at its fifty-first session the final report of the Special Rapporteurs including, if appropriate, the desirability of a

third optional protocol to the International Covenant on Civil and Political Rights, aimed at guaranteeing under all circumstances the right to a fair trial and a remedy,

Recalling also articles 8, 10 and 11 of the Universal Declaration of Human Rights, which affirm the right of every individual to a fair and public hearing by an independent and impartial tribunal, the right to be presumed innocent until proven guilty and the right to an effective remedy,

Recalling further article 14 of the International Covenant on Civil and Political Rights, which reaffirms the right of every individual to a fair and public hearing,

Mindful of article 9, subparagraphs 3 and 4 of the International Covenant on Civil and Political Rights which require States parties to ensure that an arrested or detained person is brought promptly before a judge or similar officer and that anyone who is deprived of liberty is entitled to take proceedings before a court in order that the court may without delay determine the lawfulness of the detention and order release if the detention is not lawful,

Mindful also of article 2.3 of the International Covenant on Civil and Political Rights and article 8 of the Universal Declaration of Human Rights, which assure the right to an effective remedy for violations of human rights,

Noting that the fair trial provisions contained in articles 5, 6, 7 and 26 of the African Charter on Human and Peoples' Rights are non-derogable,

Noting also that the judicial guarantees for the protection of the rights made non-derogable by article 27 of the American Convention on Human Rights are non-derogable,

Noting further the guarantees of a fair trial and a remedy incorporated in articles 5, 7, 12, 13 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Noting in addition that articles 96 and 99 to 108 of the Geneva Convention relative to the Treatment of Prisoners of War prescribe the rights of prisoners of war in judicial proceedings; that articles 54, 64 to 74, and 117 to 126 of the Geneva Convention relative to the Protections of Civilian Persons in Time of War provide for the right to a fair trial and a remedy in occupied territories and

extend fair trial guarantees in international armed conflicts to all persons including those arrested for actions relating to the conflict,

Noting additionally that common article 3 of the four Geneva Conventions of 12 August 1949 for the protection of war victims and article 6 of Additional Protocol II to the Geneva Conventions contain indispensable judicial guarantees for the protection of the right to a fair trial during non-international armed conflicts,

Aware of the Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles on the Independence of the Judiciary, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors, which are intended to apply at all times,

Aware also that the Human Rights Committee at its fiftieth session decided to communicate to the Sub-Commission its view that the remedies provided in article 9, subparagraphs 3 and 4 read in conjunction with article 2 are inherent in the International Covenant on Civil and Political Rights as a whole,

Aware further that the Human Rights Committee at its twenty-first session adopted General Comment No. 13 on article 14 in which it indicated that States parties should, even in times of public emergency, respect the conditions in paragraph 1 of article 14 of the Covenant,

Having examined the preparatory report (E/CN.4/Sub.2/1990/34), the preliminary report (E/CN.4/Sub.2/1991/29), the progress reports (E/CN.4/Sub.2/1992/24 and Add.1-3 and E/CN.4/Sub.2/1993/24 and Add.1-3) and the final report (E/CN.4/Sub.2/1994/24) on the right to a fair trial and a remedy, prepared by the Special Rapporteurs,

1. Expresses its appreciation to Mr. Stanislav Chernichenko and Mr. William Treat for their final report and for their recommendations for strengthening the implementation of the right to a fair trial and a remedy;

2. Also expresses its appreciation to the Governments, non-governmental organizations and bar associations that provided information for the study, for example by responding to the questionnaires prepared by the Special Rapporteurs;

3. Reaffirms that articles 2.3, 9.3, 9.4 and 14 of the International Covenant on Civil and Political Rights are inherent in the Covenant as a whole

and should accordingly be considered to be non-derogable, particularly because they are necessary to protect other non-derogable rights;

4. Endorses the other recommendations of the Special Rapporteurs for strengthening the implementation of the right to a fair trial and a remedy;

5. Recommends, as suggested by the Special Rapporteurs, that the international monitoring of the right to a fair trial and a remedy continue through such bodies as the Human Rights Committee; the Working Group on Arbitrary Detention; the Special Rapporteur on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers; the European Commission and Court of Human Rights; the Inter-American Commission on and Court of Human Rights; the African Commission on Human and Peoples' Rights; and international trial observers sent by intergovernmental organizations, Governments, and non-governmental organizations;

6. Endorses the useful summary of norms and interpretations embodied in the draft body of principles on the right to a fair trial and a remedy (E/CN.4/Sub.2/1994/24, annex II) and believes it beneficial to consider the draft body of principles;

7. Notes with appreciation and approves the proposal of the Special Rapporteurs to compile, without financial implications, the entire study so that it can be published in one volume to be issued under the United Nations Human Rights Study Series;

8. Recommends the following draft decision to the Commission on Human Rights for adoption:

"The Commission on Human Rights, noting resolution 1994/35 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, expresses its appreciation to the Special Rapporteurs, Mr. Stanislav Chernichenko and Mr. William Treat, for their work on the study entitled 'The right to a fair trial: current recognition and measures necessary for its strengthening' and decides to endorse the request of the Sub-Commission to publish the full study in all the official languages of the United Nations, taking into account, inter alia, the comments received from Governments and members of the Sub-Commission, as well as the most recent developments up to the date on which the report is

ready for publication, and to give the study the widest possible distribution. The Commission also decides to consider at its fifty-second session the establishment of an open-ended working group to draft a third optional protocol to the International Covenant on Civil and Political Rights aiming at guaranteeing under all circumstances the right to a fair trial and a remedy, and recommends the following draft decision to the Economic and Social Council for adoption:

'The Economic and Social Council, recalling its decision 1994/251 of 22 July 1994, approves the endorsement by the Commission on Human Rights of the request of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to Mr. Stanislav Chernichenko and Mr. William Treat to publish their compiled report on the right to a fair trial and a remedy, as described in Sub-Commission resolution 1994/... of ... August 1994, and requests the Secretary-General to provide all assistance necessary for the compilation and publication of the compiled report.'"

36th meeting
26 August 1994
[Adopted without a vote. See chap. XI.]

1994/36. Question of human rights and states of emergency

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling Commission on Human Rights resolution 1983/18 of 22 February 1983, in which the Commission requested the Sub-Commission to propose measures designed to ensure respect throughout the world of human rights and fundamental freedoms in situations where states of siege or emergency exist, especially of those rights referred to in article 4, paragraph 2, of the International Covenant on Civil and Political Rights, prohibiting derogation from certain rights, even in time of public emergency,

Recalling also the following resolutions it has adopted on this question: 10 (XXX), 1983/28, 1983/30, 1985/32, 1987/25, 1988/24, 1989/28, 1990/19, 1991/18, 1992/22 and 1993/28,

Having taken note of the seventh revised annual report and list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency, submitted by the Special Rapporteur, Mr. Leandro Despouy (E/CN.4/Sub.2/1994/23),

Bearing in mind that, in its resolution 1991/34 of 5 March 1991, the Commission on Human Rights invited the Sub-Commission to consider the question of the effectiveness of habeas corpus and similar remedies during states of emergencies and to formulate suggestions thereon,

Recalling that it requested the Special Rapporteur to make recommendations on the impact of emergency measures on non-derogable rights, and noting with satisfaction that in May 1994 he organized, for this purpose, an international expert meeting for an initial study process that deserves to be further explored,

1. Takes note with interest of the seventh annual revised report and list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency, submitted by the Special Rapporteur (E/CN.4/Sub.2/1994/23) and notes with satisfaction that the Rapporteur is increasingly enjoying active cooperation from States, as well as competent bodies of the United Nations, the specialized agencies, non-governmental organizations and competent university institutes;

2. Notes with concern that, as apparent from the seventh report, dated 3 June, since 1 January 1985 a state of emergency has been proclaimed, extended or maintained in various forms on 196 occasions in States and territories, whereas in that same period, it has been terminated only 59 times;

3. Invites all States whose legislation does not contain any explicit provision guaranteeing the legality of the introduction of a state of emergency to adopt provisions in conformity with international rules and principles, as developed in the successive reports of the Special Rapporteur and endorsed by the Commission on Human Rights, and similarly invites States whose legislation explicitly provides for states of emergency to ensure that such legislation is in conformity with international rules on the matter;

4. Notes the increasing interest shown by States in receiving technical assistance concerning states of emergency and the rights which can

not be derogated from in such circumstances, and expresses the hope that the Secretary-General will be able to respond promptly and effectively to requests from States in the context of advisory services in the field of human rights and through the Special Rapporteur;

5. Urges Governments, particularly those facing situations of internal unrest, to limit resort to a state of emergency exclusively to circumstances whose seriousness and exceptional character are such that they justify the introduction of such an emergency, and to combine such introduction with guarantees (notably with regard to proportionality, duration and the inalienability of non-derogable rights) intended to maintain respect for human rights, so as to prevent a state of emergency from becoming commonplace and from being unjustifiably perpetuated;

6. Notes with deep concern that, to deal with certain situations, including internal unrest or the threat of such unrest, some States do not hesitate to take emergency measures without officially proclaiming a state of emergency, and that such measures have serious repercussions on the enjoyment of human rights, and invites all States to ensure that no emergency measures, including suspension or limitation of certain basic rights, is taken without the corresponding state of emergency being officially proclaimed, in accordance with national law and international rules and principles;

7. Takes note with interest of the consultations entered into by the Special Rapporteur to devise principles to be followed for drafting legal provisions on states of emergency (March 1991) and to study non-derogable rights in states or situations of emergency (May 1994), encourages the Rapporteur to organize, in May 1995 in Geneva, a second expert meeting on the question of non-derogable rights to explore the matter further, and requests him to report on the results of the meeting at its forty-seventh session, in the context of his eighth report;

8. Also requests the Special Rapporteur to submit at that same session an updated list of States which have proclaimed, extended or terminated a state of emergency since 1 January 1985, so that, at its fifty-first session, the Commission on Human Rights will have the latest and most comprehensive possible information on the past 10 years;

9. Takes note of the consultations with institutions and experts already held by the Special Rapporteur in implementation of resolution 1993/28 on the subject of receiving, storing and retrieving information, through a databank, on states of emergency and related human rights questions, and invites him to pursue and broaden such consultations in early 1995 so as to report on the results at its forty-seventh session;

10. Requests the Secretary-General to place at the disposal of the Special Rapporteur all the human and material resources needed to carry out his mandate in accordance with the foregoing;

11. Recommends the following draft resolution to the Commission on Human Rights for adoption:

"The Commission on Human Rights,

Endorsing Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1994/36, dated 26 August 1994,

Recommends the following draft resolution to the Economic and Social Council for adoption:

'The Economic and Social Council,

Recalling Commission on Human Rights, resolution 1995/..., dated ... 1995 and Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1994/..., dated ... August 1994, entitled "Question of human rights and states of emergency",

1. Approves the Sub-Commission's requests made to the Special Rapporteur on the question of human rights and states of emergency to fulfil his mandate, notably those relating to the holding of an expert meeting (i) to study non-derogable rights in states or situations of emergency and to international principles to be taken into account in drafting national legal rules, and (ii) to establish a data on states of emergency and related human rights questions,

2. Requests the Secretary-General to place at the disposal of the Special Rapporteur the human and material resources needed to fulfil his mandate in accordance with the foregoing.'"

36th meeting
26 August 1994
[Adopted without a vote. See chap. XI]

1994/37. Measures towards the full realization of economic, social and cultural rights

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling the provisions of the Charter which establish that one of the purposes of the United Nations is to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights for all,

Conscious that the Universal Declaration of Human Rights provides that everyone is entitled to realization of the economic, social and cultural rights indispensable for his dignity and the free development of his personality,

Recalling Commission on Human Rights resolutions 1994/11, 1994/12, 1994/14, 1994/20, 1994/21 and 1994/65,

Mindful of the Vienna Declaration and Programme of Action (A/CONF.157/23) adopted by the World Conference on Human Rights, in which the need is underlined for a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels,

Reaffirming the interdependence and indivisibility of civil, cultural, economic, political and social human rights and that the promotion and protection of any of these rights should never exempt or excuse States from the promotion and protection of the other rights,

Emphasizing the need to secure, within the shortest possible time-frame, the full respect and enjoyment of the rights contained in the International Covenant on Economic, Social and Cultural Rights, with particular emphasis on the rights of the most vulnerable and disadvantaged,

Welcoming the decisions of the General Assembly to convene the World Summit for Social Development in 1995 and the United Nations Conference on Human Settlements (Habitat II) in 1996, both of which can provide a means of further strengthening economic, social and cultural rights and of expediently promoting the full realization of these rights,

Recalling the four reports of the Special Rapporteur on the realization of economic, social and cultural rights, Mr. Danilo Türk, in particular the

recommendations contained in his final report (E/CN.4/Sub.2/1992/16, paras. 202-246),

Welcoming the working paper (E/C.12/1994/WP.9) submitted by the Advisory Services Programme of the Centre for Human Rights to the Committee on Economic, Social and Cultural Rights, at its tenth session, held in May 1994, outlining measures taken by the Advisory Services Programme relating to economic, social and cultural rights,

Taking note of Sub-Commission document E/CN.4/Sub.2/1994/11 which addresses impunity in the context of economic, social and cultural rights,

Welcoming the valuable work carried out by the Committee on Economic, Social and Cultural Rights and the Working Group on the Right to Development,

Convinced of the need, throughout the United Nations human rights programme, substantially to increase attention to and to undertake activities on economic, social and cultural rights with a view to promoting the full realization of these rights,

Aware that many of the activities outlined in earlier resolutions on economic, social and cultural rights by the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities have yet to be carried out or completed,

Recalling its resolutions 1991/27 and 1992/29;

1. Welcomes the efforts of the Secretary-General to publish in one document the compiled reports of the Special Rapporteur on the realization of economic, social and cultural rights, Mr. Danilo Türk;

2. Expresses the hope that the international financial institutions will respond favourably to the request made by the Commission on Human Rights in its resolutions 1993/14 and 1994/20 to consider convening an expert seminar on the role of these institutions in the realization of economic, social and cultural rights, and encourages the international financial institutions to ensure the wide participation of human rights experts in the seminar, including representatives of non-governmental organizations;

3. Urges the international financial institutions, in particular the World Bank and the International Monetary Fund, to bear in mind the impact of

their policies and programmes on the realization of economic, social and cultural rights;

4. Encourages the United Nations Children's Fund, the United Nations Development Programme, the regional commissions, the United Nations Centre for Human Settlements (Habitat), the World Bank, the International Monetary Fund, the World Trade Organization and other relevant international programmes and agencies to integrate human rights concerns into their respective mandates;

5. Invites the Preparatory Committee for the World Summit for Social Development, to be held at Copenhagen in 1995, to give due emphasis to economic, social and cultural rights, and in particular to the International Covenant on Economic, Social and Cultural Rights, in developing general principles and guidelines and the plan of action of the Summit and to respond favourably to the offer by the Committee on Economic, Social and Cultural Rights to act as the monitoring body for the plan of action arising from the Summit;

6. Also invites the Preparatory Committee for the United Nations Conference on Human Settlements (Habitat II), to be held in 1996, to give due emphasis to economic, social and cultural rights, in particular the right to adequate housing, in developing general principles and guidelines and the plan of action of the Summit;

7. Requests the Commission on Human Rights to:

(a) Consider the desirability of appointing thematic rapporteurs entrusted with investigating specific economic, social and cultural rights, in particular the right to adequate housing and human rights and the environment, especially in view of the substantial non-realization of these and other economic, social and cultural rights;

(b) Examine the work carried out by the Committee on Economic, Social and Cultural Rights concerning the adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights granting individuals and groups the right to submit communications alleging non-compliance by States parties, whether by act or omission, with the provisions of the Covenant and to forward its specific views to the Committee as to the contents of such an optional protocol;

(c) Consider explicitly requesting each country rapporteur to include a specific reference to the enjoyment of economic, social and cultural rights in their reports and to develop guidelines for use by country rapporteurs in this regard;

(d) Request the High Commissioner for Human Rights to take into full consideration economic, social and cultural rights in carrying out his mandate;

(e) Request the international financial institutions, in particular the World Bank, the International Monetary Fund and the World Trade Organization, to develop independent mechanisms designed to ensure that international human rights standards are taken fully into account in the adoption of all relevant policies, projects and practices and that these standards are fully respected in this regard;

8. Requests the Secretary-General to:

(a) Complete the preparation of basic policy guidelines on structural adjustment and economic, social and cultural rights, based on the principles of international human rights law and which could serve as a basis for continued dialogue between the United Nations human rights programme and the international financial institutions of the United Nations, in particular the World Bank and the International Monetary Fund;

(b) Continue efforts towards the development of policy guidelines relating to economic, social and cultural rights;

(c) Also continue the survey of the legislative recognition of economic, social and cultural rights, and in this context, make concrete proposals as to the need for further standard-setting in the field of economic, social and cultural rights, and take into account the draft international convention on housing rights contained in the second progress report of the Special Rapporteur on promoting the realization of the right to adequate housing (E/CN.4/Sub.2/1994/20, chap. IX) and the draft declaration of principles on human rights and the environment contained in the final report of the Special Rapporteur on human rights and the environment (E/CN.4/Sub.2/1994/9, annex 1);

(d) Consider the possibility of convening expert seminars, in accordance with Commission on Human Rights resolution 1994/20, focused on specific economic, social and cultural rights, including (i) the right to work; (ii) the right to

social security; (iii) the right to housing; (iv) the right to food; (v) the right to health; (vi) the right to education; and (vii) the right to culture, with a view to clarifying the particular content of these rights and elaborating universally relevant policy guidelines for each of these rights based on international human rights law;

(e) Consider, as a matter of priority, increasing the number of staff of the Centre for Human Rights with practical expertise in the area of economic, social and cultural rights, and in this regard, also consider the establishment of a section devoted exclusively to activities on and the promotion of economic, social and cultural rights, including the right to development, within the Centre for Human Rights;

(f) Develop the capacity necessary for carrying out training sessions for States, United Nations specialized and other agencies and programmes and non-governmental organizations on economic, social and cultural rights;

(g) Prepare for its consideration at its forty-seventh session a background document examining the relationship between the enjoyment of human rights, in particular, international labour and trade union rights and the working methods and activities of transnational corporations;

9. Decides to consider progress made on implementing the present resolution at its forty-seventh session under the agenda item entitled "Economic, social and cultural rights".

36th meeting
26 August 1994
[Adopted without a vote. See chap. IX.]

1994/38. Promoting the realization of the right to adequate housing

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Reaffirming the right of every woman, man and child to a safe and secure place to live in peace and dignity,

Deeply concerned that in excess of one billion persons who remain homeless or inadequately housed throughout the world, and have yet to attain their legitimate rights to adequate housing,

Convinced of the continuing and urgent need for renewed attention and commitment by all relevant actors to the human right to adequate housing,

Recalling Commission on Human Rights decision 1993/103 of 4 March 1993,

Recalling also Commission on Human Rights resolution 1994/14 of 25 February 1994,

Recalling further its resolutions 1993/36 of 25 August 1993, 1992/26 of 27 August 1992 and 1991/26 of 29 August 1991,

1. Expresses its appreciation to the Special Rapporteur on the right to adequate housing, Mr. Rajindar Sachar, for his second progress report (E/CN.4/Sub.2/1994/20);

2. Welcomes the preliminary recommendations and conclusions contained in the second progress report (chap. X) addressed to both the United Nations system and to Governments and urges the respective entities to implement the relevant recommendations in a timely fashion;

3. Takes note with interest of the draft international convention on housing rights contained in the second progress report (chap. IX);

4. Invites States, United Nations specialized and other agencies, international and regional intergovernmental organizations, and non-governmental and community-based organizations to provide the Special Rapporteur with their views and comments on all aspects of the right to adequate housing, in particular the draft international convention on housing rights, for consideration in the preparation of his final report;

5. Encourages the Preparatory Committee for the World Summit for Social Development, to be held in March 1995, to take full account in its agenda and plan of action of the views of the Special Rapporteur on the right to adequate housing and ongoing activities of the United Nations concerning housing rights;

6. Encourages the Preparatory Committee for the United Nations Conference on Human Settlements (Habitat II), to be held in 1996, to take full account in its agenda and plan of action of the views of the Special Rapporteur on the right to adequate housing and ongoing activities of the United Nations concerning housing rights, and to undertake specific activities with regard to the agenda and plan of action on the human right to adequate housing within the context of Habitat II;

7. Invites the United Nations Centre on Human Settlements (Habitat) to consider implementing the proposals made to it by the Special Rapporteur in his second progress report (paras. 88-90);

8. Requests the Special Rapporteur to submit his final report on the right to adequate housing to the Sub-Commission at its forty-seventh session;

9. Requests the Secretary-General to provide the Special Rapporteur with all the assistance he requires for the preparation of his final report, and in particular the necessary expert assistance to compile and analyse the information and documents he receives;

10. Also requests the Secretary-General to organize an expert seminar on the right to adequate housing, prior to the completion of his final report, in order to discuss appropriate, effective and comprehensive conclusions and recommendations;

11. Decides to consider the final report and to develop a series of concrete measures based upon it at its forty-seventh session under the agenda item entitled "The realization of economic, social and cultural rights";

12. Recommends the following draft resolution to the Commission on Human Rights for adoption:

"The Commission on Human Rights,

Taking note of resolution 1994/38 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1994/14 of 25 February 1994,

Also recalling its decision 1993/103 of 4 March 1993,

Welcoming the second progress report of the Special Rapporteur on the right to adequate housing (E/CN.4/Sub.2/1994/20),

1. Invites the Special Rapporteur to submit his final report to the Sub-Commission at its forty-seventh session;

2. Requests the Secretary-General to provide the Special Rapporteur with all the necessary financial, technical and expert assistance required for the completion of his final report;

3. Also requests the Secretary-General to organize an expert seminar on the human right to adequate housing in order to discuss

appropriate, effective and comprehensive final conclusions and recommendations for inclusion in the final report;

4. Recommends the following draft decision to the Economic and Social Council for adoption:

'The Economic and Social Council, taking note of Commission on Human Rights resolution 1995/... of ... 1995 and resolution 1994/... of ... August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities:

(a) Approves the Commission's request to the Secretary-General to provide the Special Rapporteur of the Sub-Commission on the right to adequate housing with all the necessary financial, technical and, in particular, expert assistance required for the completion of his final report;

(b) Also approves the Commission's request to the Secretary-General to organize an expert seminar on promoting the full realization of the right to adequate housing in order to discuss appropriate, effective and comprehensive conclusions and recommendations for inclusion in the final report of the Special Rapporteur.'"

36th meeting
26 August 1994
[Adopted without a vote. See chap. IX]

1994/39. Forced evictions

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolutions 1993/41 of 28 August 1993, 1992/14 of 27 August 1992 and 1991/12 of 26 August 1991,

Recalling also Commission on Human Rights resolution 1993/77 of 10 March 1993,

Reaffirming that every woman, man and child has the right to a secure place to live in peace and dignity,

Concerned that, according to United Nations statistics, in excess of one billion persons throughout the world are homeless or inadequately housed, and that this number is growing,

Recognizing that the practice of forced eviction involves the involuntary removal of persons, families and groups from their homes and communities, resulting in increased levels of homelessness, the loss of livelihood, landlessness, inadequate housing and living conditions and growing levels of poverty,

Disturbed that forced evictions and homelessness intensify social conflict and inequality and invariably affect the poorest, most socially, economically, environmentally and politically disadvantaged and vulnerable sectors of society,

Aware that forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a range of actors,

Aware also that racially motivated and other discriminatory motives are behind a large number of forced evictions,

Emphasizing that ultimate legal responsibility for preventing forced evictions rests with Governments,

Recalling that General Comment No. 2 (1990) on international technical assistance measures, adopted by the Committee on Economic, Social and Cultural Rights at its fourth session, states, inter alia, that international agencies should scrupulously avoid involvement in projects which involve, among other things, large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation (E/1990/23, annex III, para. 6),

Mindful of the questions concerning forced eviction included in the guidelines for States' reports submitted in conformity with articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (E/1991/23, annex IV),

Noting with appreciation that the Committee on Economic, Social and Cultural Rights, in its General Comment No. 4 (1991) considered that instances of forced eviction were, prima facie, incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights and could only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law (E/1992/23, annex III, para. 18),

Recalling the conclusions and recommendations contained in the analytical report compiled by the Secretary-General on forced evictions (E/CN.4/1994/20), submitted to the Commission on Human Rights at its fiftieth session,

Noting the concluding observations of the Committee on Economic, Social and Cultural Rights at its fifth (1990) to tenth (1994) sessions concerning forced evictions within specific States parties,

Noting also the inclusion of forced evictions as one of the primary causes of the international housing crisis in the working paper and the first and second progress reports of the Special Rapporteur on promoting the realization of the right to adequate housing, Mr. Rajindar Sachar (E/CN.4/Sub.2/1992/15, E/CN.4/Sub.2/1993/15 and E/CN.4/Sub.2/1994/20),

1. Reaffirms that the practice of forced eviction constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing;

2. Strongly urges Governments to undertake immediately all necessary measures, at all levels, towards eliminating the practice of forced eviction, in particular those Governments on whose territories forced evictions are currently planned to take place;

3. Also strongly urges Governments to confer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary legal, administrative and other measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups;

4. Recommends that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes or needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups;

5. Invites all international financial, trade, development and other related institutions and agencies, in particular those associated with the United Nations, to take fully into account the views contained in the present resolution, and pronouncements under international law on the practice of forced eviction;

6. Invites the Committee on Economic, Social and Cultural Rights to consider adopting a general comment on forced evictions with reference to the specific obligations of States parties as contained in the International Covenant

on Economic, Social and Cultural Rights, in particular as they relate to the right to adequate food and housing;

7. Invites all country and thematic rapporteurs of both the Sub-Commission and the Commission on Human Rights to include cases of forced eviction in their respective reports and to seek to monitor consistently the practice of forced evictions as they relate to the countries and themes involved;

8. Invites the treaty bodies to examine forced evictions within the context of their respective mandates;

9. Requests the Preparatory Committee for the United Nations Conference on Human Settlements (Habitat II), to be held in 1996, to address the issue of forced eviction, in particular as a violation of the right to adequate housing, in the agenda, the principles and guidelines and the plan of action to be developed within the framework of the Conference;

10. Requests the Secretary-General, in view of the numerous developments concerning this practice within various programmes of the United Nations, to compile and publish, within the Human Rights Fact Sheet series, a fact sheet on forced evictions and human rights;

11. Requests the Commission on Human Rights to consider how best to proceed with further activities on the question of forced eviction under the agenda item entitled "Realization of economic, social and cultural rights";

12. Requests the Secretary-General, in accordance with paragraph 172 of his analytical report (E/CN.4/1994/20), to prepare a series of guidelines on international events and forced evictions;

13. Decides to consider the issue of forced eviction at its forty-seventh session under the agenda item entitled "The realization of economic, social and cultural rights" and to determine at its forty-seventh session how most effectively to continue its consideration of the issue of forced evictions.

36th meeting
26 August 1994
[Adopted without a vote. See chap. IX.]

1994/40. Human rights and income distribution

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Reaffirming the indivisibility, interdependence and interrelated nature of economic, social and cultural rights and civil and political rights,

Mindful that the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and a wide range of additional texts provide unequivocally that all persons are entitled to the full realization of economic, social and cultural rights,

Taking note of the Declaration on the Right to Development (General Assembly resolution 41/128 of 4 December 1986, annex),

Recalling paragraph I.10 of the Vienna Declaration and Programme of Action (A/CONF.157/23), in which the World Conference on Human Rights inter alia reaffirmed the right to development as a universal and inalienable right and an integral part of human rights, and urged States and the international community to promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development,

Aware that all States have legally binding obligations to respect, protect and fulfil economic, social and cultural rights,

Convinced that education plays a fundamental role for the exercise of human rights and for providing equality of opportunity for all,

Recalling the reports of the Special Rapporteur on the realization of economic, social and cultural rights, Mr. Danilo Türk, in particular his final report, which addressed a range of issues concerning the relationship between the enjoyment of human rights and income distribution (E/CN.4/Sub.2/1992/16, paras. 76-84),

Concerned that the implementation of economic, social and cultural rights in general and the right to education in particular have not yet received sufficient attention within the United Nations human rights framework,

Noting its resolution 1993/40 of 26 August 1993 in which it decided to entrust Mr. Asbjørn Eide with the task of producing, without financial implications, a preparatory document on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution, at both national and international levels, taking also into account

matters related to the realization of the right to development, with a view to determining how most effectively to strengthen activities in this field,

Noting also Commission on Human Rights resolution 1994/20 of 1 March 1994, in which the Commission endorsed the decision of the Sub-Commission and encouraged the Sub-Commission to continue to give attention to this issue,

Aware that the relationship between income distribution and growing levels of poverty, as well as the violation of human rights, requires further in-depth research and analysis by the human rights community,

Reiterating the fundamental principles of equality of treatment, human dignity, equity and justice,

Affirming the inherent linkages between the enjoyment of all human rights, in particular economic, social and cultural rights, and the striving towards a more equitable distribution of economic resources both within and between nations,

1. Welcomes the preparatory document on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution, prepared by Mr. Asbjørn Eide (E/CN.4/Sub.2/1994/21);

2. Endorses his conclusion that concentration of wealth constitutes serious obstacles to the realization of human rights, be they economic, social, cultural, political or civil, and that equality of opportunity is an essential element for participating effectively in the processes of development and for obtaining a just share of the benefits from it;

3. Decides to appoint Mr. José Bengoa as Special Rapporteur on the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution, at both national and international levels, taking also into account matters related to the realization of the right to development, with a view to determining how most effectively to strengthen activities in this field;

4. Requests the Special Rapporteur to pay particular attention to the impact of the enjoyment of human rights, and that of the right to education in particular, on income distribution;

5. Also requests the Special Rapporteur to submit a preliminary report at its forty-seventh session, a progress report at its forty-eighth session and a final report at its forty-ninth session;

6. Requests the Secretary-General to invite Governments, United Nations bodies, the specialized agencies and intergovernmental and non-governmental organizations to provide the Special Rapporteur with information relevant to the preparation of his report;

7. Also requests the Secretary-General to provide the Special Rapporteur with all the assistance he may require for the preparation of his study.

36th meeting
26 August 1994
[Adopted without a vote. See chap. IX.]

1994/41. Human rights and extreme poverty

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling Commission on Human Rights resolutions 1992/11 of 21 February 1992 and 1993/13 of 26 February 1993 and its own resolution 1992/27 of 27 August 1992 concerning the execution by the Sub-Commission of a study on human rights and extreme poverty and the appointment of Mr. Leandro Despouy as Special Rapporteur on that question,

Recalling its resolution 1993/35 of 25 August 1993, in which it took note with appreciation of the preliminary report of the Special Rapporteur (E/CN.4/Sub.2/1993/16),

Noting Commission on Human Rights resolution 1994/12 of 25 February 1994, in which the Commission approved the recommendations of the Special Rapporteur relating to the organization of a seminar on extreme poverty and the denial of human rights at a time close to the International Day for the Eradication of Poverty, instituted on 17 October of each year by the General Assembly in its resolution 47/196 of 22 December 1992, and endorsed Sub-Commission resolution 1993/35 taking note of the preliminary report of the Special Rapporteur,

1. Takes note with appreciation of the interim report on human rights and extreme poverty (E/CN.4/Sub.2/1994/19) submitted by the Special Rapporteur, Mr. Leandro Despouy;

2. Welcomes the approach proposed by the Special Rapporteur in his report;

3. Approves the proposals of the Special Rapporteur concerning the holding of a seminar on the topic "Extreme poverty and the denial of human rights" approved by the Commission and scheduled for 12-14 October 1994 in New York, and in particular the proposals intended to encourage participation and statements by persons living in extreme poverty and persons working alongside them in a genuine partnership, thereby responding paragraphs I.14 and I.25 of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993 (A/CONF.157/23);

4. Requests the Special Rapporteur to submit, at its forty-seventh session, a second interim report on the topic of human rights and extreme poverty taking account of the comments made, particularly by the members of the Sub-Commission, during consideration of his first interim report, and the results of the seminar on the topic "Extreme poverty and the denial of human rights", and including the initial results of his consultation with persons living in extreme poverty and persons working alongside them;

5. Considers that it would be useful for the Special Rapporteur to submit the results of the seminar to the Commission on Human Rights at its fifty-first session and to the World Summit for Social Development to be held on 11 and 12 March in Copenhagen;

6. Expresses the wish that the consultation undertaken by the Special Rapporteur should be continued, and invites Governments, intergovernmental organizations, specialized agencies and non-governmental organizations that have not yet done so to answer the questionnaire prepared by him;

7. Requests the Special Rapporteur to submit to it, at its forty-eighth session, a final report focusing on the results of his consultation with persons living in extreme poverty and persons working alongside them, and taking account of the conclusions and relevant data emerging from the World Summit for Social Development in March 1995 and the Fourth World Conference on

Women to be held in Beijing in 1995, and of the activities to be undertaken in 1996, which has been proclaimed by the General Assembly International Year for the Eradication of Poverty in resolution 48/183 of 21 December 1993;

8. Requests the Secretary-General to make available to the Special Rapporteur the human and material resources necessary for the fulfilment of his mandate, in particular for the holding of the seminar on the topic "Extreme poverty and the denial of human rights";

9. Recommends the following draft resolution to the Commission on Human Rights for adoption:

"The Commission on Human Rights,

Endorsing resolution 1994/41 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

Having taken note of the results [of the work] of the seminar on the topic 'Extreme poverty and the denial of human rights' organized by the Special Rapporteur;

Recommends the following draft resolution to the Economic and Social Council for adoption:

'The Economic and Social Council,

Recalling Commission on Human Rights resolution 1995/.. dated ... 1995 and resolution 1994/.. of the Sub-Commission on Prevention of Discrimination and Protection of Minorities dated .. August 1994,

1. Takes note of the proposals of the Special Rapporteur on the study of the question of human rights and extreme poverty;

2. Requests the Secretary-General to make available to the Special Rapporteur the human and material resources necessary for the fulfilment of his mandate'."

36th meeting
26 August 1994
[Adopted without a vote. See chap. IX]

1994/42. Human rights dimensions of population transfer, including the implantation of settlers and settlements

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1990/17 of 30 August 1990 and 1991/28 of 29 August 1991, in which it decided to include the question of the human rights dimensions of population transfer, including the implantation of settlers and settlements, in its future work programme with a view to considering further effective action on this matter, and its resolution 1992/28 of 27 August 1992, in which it decided to entrust Mr. Awn Shawkat Al-Khasawneh and Mr. Ribot Hatano with the task of preparing a preliminary study on the question,

Recalling also its resolution 1993/34 of 25 August 1993 and Commission on Human Rights decision 1994/102 of 25 February 1994 requesting Mr. Al-Khasawneh to continue the study,

Recalling further that the Sub-Commission in its resolution 1992/28 recognized that practices of population transfer constitute a violation of fundamental human rights,

1. Takes note with appreciation and commends the progress report on the human rights dimensions of population transfer, including the implantation of settlers and settlements (E/CN.4/Sub.2/1994/18 and Corr.1) submitted by the Special Rapporteur, in particular section VI on state responsibility and population transfer;

2. Endorses the conclusions and recommendations contained in the progress report;

3. Requests the Special Rapporteur to submit a final report on the question to the Sub-Commission at its forty-seventh session;

4. Invites the Special Rapporteur to give due attention to cases of population transfer submitted to him in accordance with Commission decision 1994/102;

5. Welcomes Economic and Social Council decision 1994/272 of 25 July 1994 authorizing the organization of a multidisciplinary expert seminar prior to the preparation of the final report, in order to formulate appropriate final conclusions and recommendations;

6. Requests the Secretary-General to invite the Governments, United Nations bodies and intergovernmental and non-governmental organizations concerned which have not yet done so, to provide the Special Rapporteur with information relevant to the preparation of his reports;

7. Also requests the Secretary-General to provide the Special Rapporteur with all the assistance he may require for the preparation of his final report and the necessary assistance to compile and analyse the information and documents collected;

8. Invites the Special Rapporteur to undertake visits to the sites of diverse ongoing cases of population transfer selected on the basis of information received for his reports;

9. Decides to consider the final report of the Special Rapporteur at its forty-seventh session under the agenda item entitled "Freedom of movement".

36th meeting
26 August 1994
[Adopted without a vote. See chap. IX]

1994/43. Human rights of women and the girl child

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1992/4 of 14 August 1992,

Recalling also the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, which states that the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights and that the human rights of women should form an integral part of the United Nations human rights activities (A/CONF.157/23, para. I.18),

Welcoming Commission on Human Rights resolutions 1993/46 and 1994/45 regarding the integration of the equal status of women and the human rights of women into the mainstream of United Nations system-wide activity,

Welcoming also the appointment by the Commission on Human Rights of the Special Rapporteur on violence against women and the appointment of a focal point for the human rights of women within the Centre for Human Rights,

1. Decides to consider the human rights of women and the girl child under every relevant item of its agenda, as well as in all relevant studies undertaken by the Sub-Commission;

2. Requests that all reports submitted at its forty-seventh session contain a gender perspective in their analyses and recommendations;

3. Appeals to all Governments that have not yet done so to ratify the Convention on the Elimination of All Forms of Discrimination against Women;

4. Further requests the Secretary-General to obtain the views of the Committee on the Elimination of Discrimination against Women and the Commission on the Status of Women on the question whether it would be desirable to have an advisory opinion on the value and legal effect of reservations concerning the Convention on the Elimination of All Forms of Discrimination against Women, and to invite those bodies to formulate, in their replies, any other observations on the question of reservations to that Convention they consider appropriate;

5. Requests the Secretary-General to ensure that United Nations human rights and humanitarian relief personnel recognize and deal with the human rights violations particular to women and carry out their work without gender bias;

6. Also requests the Secretary-General to report to the Sub-Commission at its forty-seventh session on the steps taken since the World Conference on Human Rights by special rapporteurs, experts, working groups, treaty bodies and other mechanisms of the Commission and the Sub-Commission to implement the integration of women's human rights into the United Nations system;

7. Decides to replace the title of the item by "The implementation of the human rights of women".

36th meeting
26 August 1994
[Adopted without a vote. See chap. XII.]

1994/44. Relocation of Navajo and Hopi families

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1989/37 of 1 September 1989 and 1990/34 of 31 August 1990 concerning the relocation of Navajo and Hopi families from northern Arizona in the United States of America,

Recalling also the reports prepared by Ms. Erica-Irene Daes and Mr. John Carey (E/CN.4/Sub.2/1989/35, part I and part II and Add.1) pursuant to its decision 1988/105 of 1 September 1989,

Mindful of the conclusions contained in the working paper on human rights dimensions of population transfer, including the implantation of settlers and settlements prepared by Ms. Christy Mbonu (E/CN.4/Sub.2/1981/47), with respect to the impact of such activities on the enjoyment of human rights,

1. Recommends that members of the Navajo Nation and Hopi Tribal Council participate in court-ordered mediation to seek a peaceful settlement of the situation;

2. Expresses the hope that mediation will result in a settlement that respects the rights and dignity of the families directly affected;

3. Appeals to the Government of the United States of America to ensure, through cooperation with the court-appointed mediator, that no further relocation of these families takes place;

4. Requests the mediator to submit all relevant information regarding the human rights aspects of the case in question and the outcome of the mediation to the Sub-Commission;

5. Decides to monitor the situation and gather information, including the mediator's reports, for the future work of and consideration by the members of the Sub-Commission and other bodies of the United Nations;

6. Requests the Secretary-General to invite indigenous peoples' organizations, Governments and non-governmental organizations to submit information concerning the progress of the court-ordered mediation for consideration by the Sub-Commission at its forty-seventh session.

36th meeting
26 August 1994
[Adopted without a vote. See chap. XVI.]

1994/45. Draft United Nations declaration on the rights of indigenous peoples

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolutions 1985/22 of 29 August 1985, 1991/30 of 29 August 1991, 1992/33 of 27 August 1992, 1993/46 of 26 August 1993,

Taking into account, in particular, paragraph 3 of its resolution 1993/46, in which it decided to postpone until its forty-sixth session consideration of the draft United Nations declaration on the rights of indigenous peoples agreed upon by the members of the Working Group, to request the Secretary-General to submit the draft declaration to the appropriate services in the Centre for Human Rights for its technical revision, and to submit, if possible, the draft declaration to the Commission on Human Rights with the recommendation that the Commission adopt it at its fifty-first session,

Recalling Commission on Human Rights resolution 1994/29 of 4 March 1994, in which the Sub-Commission was urged to complete its consideration of the draft United Nations declaration at its forty-sixth session and to submit it to the Commission at its fifty-first session together with any recommendations thereon,

Bearing in mind General Assembly resolution 47/75 of 14 December 1992, paragraph 12 of Commission on Human Rights resolution 1993/30 of 5 March 1993, paragraph 6 (a) of Commission resolution 1993/31 of 5 March 1993 and paragraph II.28 of the Vienna Declaration and Programme of Action,

Having considered the report of the Working Group on Indigenous Populations on its twelfth session (E/CN.4/Sub.2/1994/30), in particular the general comments on the draft declaration and the recommendations contained in chapters II and IX of the report respectively,

Taking into account the technical review of the draft declaration prepared by the Centre for Human Rights (E/CN.4/Sub.2/1994/2 and Add.1),

1. Expresses its satisfaction at the conclusion of the deliberations on the draft United Nations declaration on the rights of indigenous peoples by the Working Group on Indigenous Populations and the general views of the participants as reflected in the report of the Working Group on its twelfth session;

2. Expresses its appreciation to the Chairperson-Rapporteur of the Working Group, Ms. Erica-Irene Daes, and to the present and former members of the

Working Group for their contributions to the process of elaboration of the draft declaration;

3. Expresses its appreciation to the Centre for Human Rights for its technical revision of the draft declaration;

4. Decides:

(a) To adopt the draft United Nations declaration on the rights of indigenous peoples agreed upon by members of the Working Group as contained in the annex to the present resolution;

(b) To submit the draft declaration to the Commission on Human Rights at its fifty-first session with the request that it consider the draft as expeditiously as possible;

(c) To request the Secretary-General to transmit the text of the draft declaration to indigenous peoples and organizations, Governments and intergovernmental organizations and to include in the note of transmittal the information that the draft declaration is to be submitted to the Commission on Human Rights at its fifty-first session;

5. Recommends that the Commission on Human Rights and the Economic and Social Council take effective measures to ensure that representatives of indigenous peoples are able to participate in the consideration of the draft declaration by these two bodies, regardless of their consultative status with the Economic and Social Council.

36th meeting
26 August 1994
[Adopted without a vote. See chap. XVI.]

1994/46. Discrimination against indigenous peoples

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Bearing in mind that one of the purposes of the United Nations, as set forth in the Charter, is the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and

fundamental freedoms for all without discrimination as to race, sex, language or religion,

Reaffirming the urgent need to recognize, promote and protect more effectively the human rights and fundamental freedoms of indigenous peoples,

Recalling Economic and Social Council resolution 1982/34 of 7 May 1982, in which the Council authorized the Sub-Commission to establish annually a working group on indigenous populations,

Recalling also General Assembly resolution 48/163 of 21 December 1993 on the International Decade of the World's Indigenous People,

Taking note with appreciation of the report of the Working Group on its twelfth session (E/CN.4/Sub.2/1994/30), and, in particular, of its conclusions and recommendations,

Taking note also of Commission on Human Rights resolution 1993/30, in which the Commission recommended to all thematic rapporteurs, special representatives, independent experts and working groups to pay special attention, within the framework of their mandates, to the situation of indigenous people,

Mindful of the relevant recommendations adopted by the World Conference on Human Rights, in particular those contained in Part I, paragraph 20 and Part II, paragraphs 28 to 32 of the Vienna Declaration and Programme of Action (A/CONF.157/23),

1. Expresses its deep appreciation to the Working Group on Indigenous Populations and in particular to its Chairperson-Rapporteur, Ms. Erica-Irene A. Daes, for the work accomplished during its twelfth session;

2. Welcomes the proclamation by the General Assembly in its resolution 48/163 of 21 December 1993 of the International Decade of the World's Indigenous People to begin on 10 December 1994;

3. Requests the Secretary-General to transmit the report of the Working Group on its twelfth session to indigenous peoples and organizations, Governments and intergovernmental and non-governmental organizations as well as to all thematic rapporteurs, special representatives, independent experts and working groups;

4. Requests the Commission on Human Rights to recommend to the Economic and Social Council that it approve the participation of the

Chairperson-Rapporteur of the Working Group, Ms. Erica-Irene A. Daes, in the World Summit for Social Development, which will take place at Copenhagen in March 1995;

5. Requests the Secretary-General to prepare an annotated agenda for the thirteenth session of the Working Group on Indigenous Populations containing, inter alia, the following items: standard-setting activities, review of developments, the study of treaties and agreements and other constructive arrangements between States and indigenous peoples, the International Decade of the World's Indigenous People, a permanent forum for indigenous people, the Voluntary Fund for Indigenous Populations and the United Nations operational activities and indigenous peoples;

6. Recommends the Commission on Human Rights to request the Economic and Social Council that the Working Group be authorized to meet for eight working days prior to the forty-seventh session of the Sub-Commission;

7. Decides to recommend to the Commission on Human Rights the following draft decision for adoption:

"The Commission on Human Rights, noting resolution ... of .. August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, decides to recommend to the Economic and Social Council that it approve the participation of Ms. Erica-Irene A. Daes, Chairperson-Rapporteur of the Working Group on Indigenous Populations of the Sub-Commission in the World Summit for Social Development, which will take place at Copenhagen in March 1995; and requests that the Working Group be authorized to meet for eight working days prior to the forty-seventh session of the Sub-Commission."

36th meeting
26 August 1994
[Adopted without a vote. See chap. XVI.]

1994/47. International Decade of the World's Indigenous People

The Sub-Commission on Prevention of Discrimination and Protection of Minorities

Bearing in mind that one of the purposes of the United Nations, as set forth in the Charter, is the achievement of international cooperation in solving

international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recalling General Assembly resolution 48/163 of 21 December 1993, in which the Assembly proclaimed the International Decade of the World's Indigenous People, and Commission on Human Rights resolution 1994/26 of 4 March 1994,

Recalling also that the General Assembly in resolution 48/163 requested the Commission on Human Rights to invite the Working Group on Indigenous Populations to identify an appropriate date for the celebration of the International Day of Indigenous People,

Recalling further that the Commission on Human Rights in resolution 1994/26 requested the Working Group to identify possible programmes, projects and other activities in connection with the Decade,

Recognizing the importance of consulting and cooperating with indigenous peoples, the need for financial support from within the United Nations, and aware of the need to build on the results and lessons of the International Year,

Having considered the report of the Working Group on Indigenous Populations on its twelfth session (E/CN.4/Sub.2/1994/30),

1. Welcomes the proclamation by the General Assembly in its resolution 48/163 of 21 December 1993 of the International Decade of the World's Indigenous People, commencing on 10 December 1994;

2. Also welcomes the decision of the General Assembly that the goal of the Decade should be the strengthening of international cooperation for the solution of problems faced by indigenous people in areas such as human rights, the environment, development, education and health;

3. Stresses the importance of achieving the adoption of the draft United Nations declaration on the rights of indigenous peoples by the General Assembly before the conclusion of the Decade;

4. Takes note with appreciation of the note on the International Decade of the World's Indigenous People prepared by the Chairperson-Rapporteur of the Working Group on Indigenous Populations, Mrs. Erica-Irene Daes (E/CN.4/Sub.2/1994/52);

5. Recommends that the International Decade have an operational focus and that the theme for the Decade be "Indigenous peoples: a new relationship: partnership in action";

6. Also recommends that attention be paid to improving the extent and effectiveness of indigenous participation in planning and implementing the activities for the Decade, including through the recruitment of indigenous staff by all relevant United Nations bodies and agencies, funds for this purpose being provided from the regular budget of the United Nations and the specialized agencies;

7. Decides to recommend that the International Day of Indigenous People be observed every year on 9 August, that date being the anniversary of the first day of the first meeting of the Working Group on Indigenous Populations in 1982;

8. Recommends that the Secretary-General establish, during the first quarter of 1995, the voluntary fund for the Decade foreseen in paragraph 14 of General Assembly resolution 48/163 and that he consider the appointment of a board of trustees including indigenous members to administer the fund;

9. Also recommends that a second technical meeting on the International Decade be convened prior to the thirteenth session of the Working Group on Indigenous Populations to consider the final programme of action for the Decade and that its suggestions be referred to the Working Group for elaboration;

10. Requests the Secretary-General to consider renewing the appointment of Mrs. Rigoberta Menchu Tum as United Nations Goodwill Ambassador.

36th meeting
26 August 1994
[Adopted without a vote. See chap. XVI.]

1994/48. Protection of the heritage of indigenous people

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1991/32 of 29 August 1991 in which it decided to entrust Mrs. Erica-Irene A. Daes, as Special Rapporteur, with the task of preparing a study of measures which should be taken by the international community to strengthen respect for the cultural property of indigenous peoples,

Recalling also Economic and Social Council decision 1992/256 of 20 July 1992, in which the Council endorsed the appointment of Mrs. Daes as Special Rapporteur with the mandate to prepare a study on the protection of the cultural and intellectual property of indigenous peoples,

Recalling further Commission on Human Rights decision 1994/105 of 4 March 1994 by which it decided to endorse the request of the Sub-Commission to the Special Rapporteur to expand her study on the protection of the cultural and intellectual property of indigenous people (E/CN.4/Sub.2/1993/28) with a view to elaborating draft principles and guidelines for the protection of the heritage of indigenous people and to submit a preliminary report to the Sub-Commission at its forty-sixth session; and that the title of the study as a whole should be "Protection of the heritage of the indigenous people",

Noting Commission on Human Rights resolution 1994/29 of 4 March 1994, in particular paragraph 14 in which it expressed its appreciation to the Special Rapporteur for her timely completion of the study,

Having considered the preliminary report prepared by the Special Rapporteur (E/CN.4/Sub.2/1994/31),

1. Expresses its deep appreciation to the Special Rapporteur, Mrs. Erica-Irene A. Daes, for her comprehensive preliminary report on the protection of the heritage of indigenous people, as well as for her recommendations, and for the proposed principles and guidelines contained in the annex to the report;

2. Takes note of the recommendations, as well as the principles and guidelines, contained in the report;

3. Requests the Secretary-General to submit the principles and guidelines to indigenous people's organizations, nations and communities, Governments, specialized agencies and intergovernmental and non-governmental organizations concerned for their comments;

4. Requests the Special Rapporteur to prepare her final report on the basis, inter alia, of the comments and information received and to submit it to the Sub-Commission at its forty-seventh session;

5. Requests the Secretary-General to provide the Special Rapporteur, with the necessary assistance to enable her to carry out her mandate successfully;

6. Recommends the following draft decision to the Commission on Human Rights for adoption:

"The Commission on Human Rights, noting resolution 1994/48 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, decides to endorse the request to the Secretary-General to submit the principles and guidelines annexed to the preliminary report of the Special Rapporteur to indigenous people's organizations, communities and nations, as well as to Governments, specialized agencies and inter-governmental and non-governmental organizations concerned, for their comments; the request to the Special Rapporteur to prepare her final report on the basis, inter alia, of the comments and information received and to submit it to the Sub-Commission at its forty-seventh session; and the request to the Secretary-General to provide the Special Rapporteur with the necessary assistance to enable her to carry out her mandate successfully. The Commission recommends to the Economic and Social Council the following draft decision for adoption:

'The Economic and Social Council, noting decision 1995/... of ... February 1995 of the Commission on Human Rights, welcomes the preliminary report on the protection of the heritage of indigenous people (E/CN.4/Sub.2/1994/31) and the relevant principles and guidelines contained in its annex, expresses its deep appreciation to the Special Rapporteur, Mrs. Erica-Irene A. Daes, requests the Secretary-General to submit the principles and guidelines to indigenous people's organizations, communities and nations, as well as to Governments, specialized agencies and inter-governmental and non-governmental organizations concerned for their comments, authorizes the Special Rapporteur to prepare her final report taking into consideration, inter alia, the comments and information received and to submit it to the Sub-Commission at its forty-seventh session, and requests the Secretary-General to provide the Special Rapporteur with all the assistance necessary to enable her to carry out her mandate successfully.'"

36th meeting
26 August 1994
[Adopted without a vote. See chap. XVI.]

1994/49. Participation of indigenous persons and organizations in bodies of the United Nations during discussion of the draft United Nations declaration on the rights of indigenous peoples

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1993/46 of 26 August 1993, in which it recommended to the Commission on Human Rights and to the Economic and Social Council that they take special measures to enable indigenous peoples to participate fully and effectively, without regard to consultative status, in the consideration of the draft United Nations declaration on the rights of indigenous peoples,

Noting General Assembly resolution 48/163 of 21 December 1993 and Commission on Human Rights resolution 1994/26 of 4 March 1994,

Noting also that 12 indigenous organizations enjoy consultative status with the Economic and Social Council and that of these only one has its head office in the South,

Bearing in mind the request made by indigenous persons and organizations and certain observer Governments during the twelfth session of the Working Group on Indigenous Populations that steps be taken to ensure effective indigenous participation in future deliberations on the draft United Nations declaration on the rights of indigenous peoples in bodies of the United Nations regardless of consultative status with the Economic and Social Council,

1. Decides to recommend that the Commission on Human Rights approve the participation of indigenous persons and organizations, without regard to consultative status with the Economic and Social Council, during discussion of the draft United Nations declaration on the rights of indigenous peoples at meetings of United Nations bodies, including the Commission itself;

2. Also decides to recommend the following draft decision to the Commission on Human Rights for adoption:

"The Commission on Human Rights, noting resolution 1994/49 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, decides to recommend to the Economic and Social Council that it approve the participation of indigenous persons and organizations, without regard to consultative status, during discussion of

the draft United Nations declaration on the rights of indigenous peoples at meetings of United Nations bodies, including the Commission itself."

36th meeting
26 August 1994
[Adopted without a vote. See chap. XVI.]

1994/50. Permanent forum in the United Nations for indigenous people

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Guided by the purposes and principles enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights,

Bearing in mind the recommendation contained in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights that the establishment of a permanent forum for indigenous people in the United Nations system should be considered,

Recalling also General Assembly resolution 48/163 of 21 December 1993 and Commission on Human Rights resolution 1994/28 of 4 March 1994,

Noting the report of the secretariat on a permanent forum (E/CN.4/Sub.2/AC.4/1994/11) and the views expressed by Governments and indigenous organizations (E/CN.4/Sub.2/AC.4/1994/11/Add.1 and E/CN.4/Sub.2/AC.4/1994/CRP.3) and the notes of the Chairperson-Rapporteur of the Working Group on Indigenous Populations, Ms. Erica-Irene Daes (E/CN.4/Sub.2/AC.4/1994/13 and E/CN.4/Sub.2/1994/30, annex 1),

Taking into account the comments and suggestions of participants at the twelfth session of the Working Group on Indigenous Populations,

1. Welcomes the request to the Commission on Human Rights by the General Assembly in its resolution 48/163 to give priority consideration to the establishment of a permanent forum for indigenous people in the United Nations system;

2. Requests the Secretary-General to invite Governments and indigenous organizations to express their views concerning the possible establishment of a permanent forum for indigenous people and to report on the comments and

suggestions received to the Working Group on Indigenous Populations at its thirteenth session;

3. Recommends that any future permanent forum play an important role in operational coordination for development and that it enjoy observer status at all relevant Untied Nations bodies, including the Economic and Social Council, the Commission on Human Rights and the Commission on Sustainable Development;

4. Also recommends that the Centre for Human Rights organize a workshop on a possible permanent forum for indigenous people with the participation of representatives of Governments, indigenous organizations and independent experts.

36th meeting
26 August 1994
[Adopted without a vote. See chap. XVI.]